Supreme Court, U.S.
AUG 24 2001
CLERK

No. 01-171

In The

Supreme Court of the United States

MARY GLENN, ERNEST JACKSON,
LORI MARSHALL and LANE GLENN,

Petitioners,

v.

LIFE INSURANCE COMPANY OF NORTH AMERICA,

Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eighth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the questions presented by petitioners regarding the appropriate standard of review under ERISA for benefit determinations by an insurance company that insures the plan and administers benefits warrant review on writ of certiorari where petitioners resisted application of ERISA to their case, failed to develop a factual basis for review of the questions presented, and now merely offer abstract legal arguments in support of their petition.

RULE 29.6 STATEMENT

The ultimate parent corporation of respondent Life Insurance Company of North America ("LINA") is CIGNA Corporation. The only publicly-held company that owns ten percent or more of LINA's stock is CIGNA Corporation.

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STATEMENT OF THE CASE

On January 1, 1981, Hallmark Cards, Inc. ("Hallmark") established an accidental death and dismemberment insurance plan for its employees through a document entitled Group Voluntary Accident Plan (the "Plan"); the document was executed by a representative of Hallmark and a representative of the Life Insurance Company of North America ("LINA"). Pursuant to the Plan and Group Life Insurance Policy No. OK 6226 issued to Hallmark by LINA, Hallmark made accidental death and dismemberment coverage available to its employees. The Plan documents consist of the Plan, the Policy and a summary plan description. The Policy excludes benefits for intentionally self-inflicted injuries "while sane or insane (in Missouri, while sane)."

Hallmark and its welfare committee are the named fiduciaries under the Plan and have authority to control and manage its operation and administration; Hallmark "shall be the Plan Administrator under the Plan for purposes of the Employee Retirement Income Security Act of 1974." The Plan is funded by the purchase of insurance and is administered in accordance with the Policy and Plan. Hallmark through its welfare committee has delegated to LINA discretionary authority and responsibility to pay and deny claims, make eligibility decisions and construe provisions of the Plan and Policy.

On January 10, 1995, Hallmark employee Robert Jackson was found dead in his apartment from a self-inflicted gunshot wound to the head. Petitioners as beneficiaries sought accidental death benefits under the Plan and Policy in February 1995. By letter dated May 25, 1995, LINA

denied the claim, stating there were no indications that the decedent was insane at the time of his death or that his suicide was accidental.

On July 19, 1995, petitioners requested an administrative review of the claim, asserting that the decedent's mental state at the time of his death was unsound and that the conditions of his employment caused his death. Petitioners stated that "[n]ames of witnesses and statements can be provided upon request."

By letter dated July 27, 1995, LINA acknowledged the request for claim review pursuant to the Employee Retirement Income Security Act of 1974. LINA requested petitioners to provide "the names and addresses of the witnesses you believe might support your assertion regarding Mr. Jackson's mental state, and work place problems" and "a detailed explanation regarding the basis for your assertion that Mr. Jackson's mental state was unsound." LINA made a second request for this information on September 28, 1995. LINA renewed its request for witnesses and supporting information in letters to petitioners' attorney dated October 23 and October 24, 1996. Petitioners did not supply the requested information.

On December 31, 1996, petitioners filed suit in Missouri state court for breach of contract and vexatious refusal to pay. LINA removed the case to federal court on March 7, 1997.

On May 9, 1997, shortly before the deadline for the Rule 26(f) meeting and proposed scheduling order, the parties filed a joint motion to stay proceedings to permit further administrative review under ERISA. The parties

contemplated that at the conclusion of the stay, "the case should be ready for submission to the Court upon an administrative record that includes a substantial factual record and defendant's review and decision regarding the submission." The District Court thereafter granted the joint motion and extended the stay from time to time to March 1998.

Petitioners retained Dr. William Logan to investigate the circumstances surrounding the decedent's suicide; he reported his conclusions in a letter to petitioners' counsel dated September 30, 1997. In reaching his conclusions, Dr. Logan reviewed certain documents including one deposition and several affidavits. Dr. Logan concluded that "Mr. Jackson could not exercise a rational judgment on the question of life or death" and had a "preoccupation with killing himself" that constituted a "morbid impulse."

Through its counsel, LINA retained Dr. Bruce Harry, a forensic psychiatrist, to review the circumstances surrounding the decedent's suicide. In addition to reviewing Dr. Logan's report and the materials reviewed by Dr. Logan, Dr. Harry spent dozens of hours reviewing additional materials and depositions and conducting interviews with certain family members and coworkers of the decedent, all of whom had been with the decedent in the weeks and days immediately prior to his suicide. Dr. Harry explained his analysis and reported his conclusions in a 41-page letter to LINA dated March 2, 1998. After setting forth numerous factors pro and con, it was Dr. Harry's conclusion "to a reasonable degree of medical certainty, that, on balance, at the time he took his own life, Mister Jackson was not insane within the meaning of the Missouri standard."

In a letter to petitioners' counsel dated March 20, 1998, John A. Taylor, Senior Life Examiner for LINA, reported his findings and conclusions upon reconsideration of plaintiffs' claim. He summarized his conclusion as follows:

> Based on the review of the above documentation, I have concluded that Mr. Jackson killed himself by shooting himself in the head and that he was not insane at the time of his death, as defined by Missouri law. Mr. Jackson may have been depressed, which is not insanity under Missouri law. Benefits under policy OK-6226 are not payable unless the insured has died accidentally. Self-inflicted wounds inflicted while sane are excluded by policy language, "No benefits will be paid for loss resulting from: intentionally self-inflicted injuries, or any attempt thereat, while sane or insane (in Missouri, while sane[])." Therefore, this is not a payable claim under policy OK-6226.

Upon motion by LINA, the District Court entered summary judgment against petitioners on all claims. Based on petitioners' statement to the court that ERISA governs their claims (made in connection with the joint motion to stay proceedings) and evidence showing that the policy was part of an employee welfare benefit plan under ERISA, the court found petitioners' state law claims for breach of contract and vexatious refusal to be preempted. App. 13a-14a. As for petitioners' ERISA claim, the District Court found that "plaintiffs have not presented facts supporting the conclusion that a conflict of interest or serious procedural irregularity caused a serious breach of LICNA's fiduciary duty." App. 16a. Accordingly, the District Court conducted judicial review

under an abuse of discretion standard and found that LINA's denial of benefits, including its decision to rely on Dr. Harry's report, involved no abuse of discretion. App. 18a-19a. The Eighth Circuit affirmed for essentially the same reasons, one judge dissenting. App. 1a-6a.

REASONS FOR DENYING THE PETITION

The petition should be denied for two reasons. First, petitioners have misportrayed this case by obscuring or omitting facts and circumstances that make this case unsuitable for considering the questions petitioners seek to raise. Second, petitioners' own Third Circuit authority indicates that the Eighth Circuit employs an ERISA standard of review that is in the mainstream with other circuits and further demonstrates how the circuits are bringing the law into alignment without the need for intervention by this Court. For either or both reasons, this case therefore presents no compelling reasons for review on writ of certiorari, as required by this Court's Rule 10.

A.

The record is virtually silent regarding LINA's purported conflict of interest apart from the bare fact that LINA is the plan insurer and has delegated authority as claims administrator. There is no evidence regarding the exact financial arrangement between Hallmark and LINA or any other facts and circumstances to enlighten analysis of the proposed questions. Moreover, petitioners failed to develop any evidence suggesting that any decisionmaker had any direct financial incentive to deny benefits, that

LINA took self-contradictory positions, or that there was a rush to decision. Indeed, although petitioners attempt to portray this case as involving an administrative process that was somehow tainted by LINA's purported conflict of interest, petitioners' own conduct had a far greater impact on the manner, sequence and timing of administrative review.

Before both the District Court and the Court of Appeals, petitioners contended that ERISA did not apply to their case. Accordingly, petitioners attempted to short-circuit the administrative review process in favor of filing non-ERISA claims in state court. Prior to filing suit and during the initial claim adjudication, and after informing LINA that they had witnesses and statements in support of their position, petitioners repeatedly disregarded LINA's request that they provide such information. The administrative process therefore stalled for lack of cooperation by petitioners.

The administrative process only resumed after petitioners' state court action was removed to federal court, whereupon a stay was entered to permit the parties to complete the administrative record upon which judicial review could then be conducted. Thus, although petitioners and the dissenting judge below attempt to diminish the opinion of Dr. Bruce Harry because LINA retained him while litigation was pending, this sequence occurred only because plaintiffs filed suit prematurely. It is pointless to attack Dr. Harry for being retained by counsel during litigation because the same is true of petitioners' expert, Dr. William Logan.

Petitioners also misportray Dr. Harry as somehow supporting Dr. Logan's opinion. In fact, Dr. Harry reached the opposite conclusion from Dr. Logan based on substantially more information than was considered by Dr. Logan. Dr. Harry began by reviewing everything Dr. Logan reviewed. Dr. Harry then reviewed additional depositions and conducted several hours of interviews with various family members and coworkers who had interacted with the decedent in the last weeks of his life. Dr. Harry then prepared an extensive 41-page analysis weighing numerous factors before reaching his conclusion to a reasonable degree of medical certainty that the decedent was not insane at the time he took his life.

In commenting on Dr. Logan's report, Dr. Harry observed that "it is always best to have as much information as possibly available at the time." Dr. Harry also found it "difficult to critique Doctor Logan's methods and conclusions because he might have been asked to render his opinions only upon the information provided to him. Further, he might have asked for more information and been denied this request." The clear import of these comments by Dr. Harry is that Dr. Logan's opinion was lacking in factual support, and these comments by no means constitute an endorsement of Dr. Logan's conclusions or methodology as petitioners try to suggest.

In summary, having resisted application of ERISA to their claims in the lower courts, petitioners failed to develop a record to support any significant analysis of the standard of review in ERISA cases involving a purported conflict of interest. In particular, there is no evidence that LINA's status as plan insurer had any causal connection to the claim determination or that LINA's

decision was made on any basis other than medical evidence and opinion. To whatever extent petitioners now complain about the sequence or nature of the administrative review process, they are merely complaining about circumstances of their own making which provide no basis for review on writ of certiorari.

B.

Since the record in this case fails to demonstrate that LINA had any substantial conflict of interest or that it affected the ERISA review process, petitioners instead focus on abstract legal questions supposedly warranting review by this Court. At the center of petitioners' argument is *Pinto v. Reliance Standard Life Ins. Co.*, 214 F.3d 377 (3d Cir. 2000), where the Third Circuit reviewed the law across the circuits and ultimately adopted the sliding scale method for reviewing discretionary benefits denials by potentially conflicted ERISA fiduciaries. Although the Third Circuit in *Pinto* commented on what it perceived as variations among the circuits, its opinion also supports the conclusion that certiorari is not warranted here for several reasons.

First, despite perceived variations among the circuits, the Third Circuit joined "with the majority of courts of appeals, which apply a sliding scale method, intensifying the degree of scrutiny to match the degree of the conflict." *Id.* at 379. As recognized by the Third Circuit, the Eighth Circuit is well within that mainstream view. *Id.* at 384 (citing *Armstrong v. Aetna Life Ins. Co.*, 128 F.3d 1263 (8th Cir. 1997) and at 391-92 (citing *Woo v. Deluxe Corp.*, 144 F.3d 1157 (8th Cir. 1998)). Thus, even assuming this

Court were inclined to examine the appropriate standard of review, the logical vehicle for such an examination would be a case from a circuit that applies a standard of review purportedly at odds with the majority of circuits.[1] By contrast, the present case is a routine application of settled and mainstream Eighth Circuit law.

Second, the Third Circuit's decision in *Pinto* actually illustrates how the circuits are aligning the law in this area without the need for further intervention by this Court. The sliding scale test has emerged as a clear majority view, and the circuits are continuing to reexamine and adjust their law with the benefit of decisions from other circuits. *See, e.g.*, 214 F.3d at 391-92 (observing that "Fourth Circuit's sliding scale approach has been adopted by several other courts") (collecting cases). This evolutionary approach to the issue is an appropriate and reasonable method for developing legal standards that must be applied to cases presenting an endless variety of facts and circumstances. Only when tested and adapted over a number of years in a wide range of cases can a truly versatile and workable standard emerge.

Finally, the perceived variations among the circuits may be more a matter of semantics than substance. Given the inherently fact-specific nature of these cases, it is

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[1] For example, the Third Circuit suggests that the Seventh Circuit has espoused an atypical view regarding whether dual status as plan insurer and plan administrator constitutes a conflict of interest (214 F.3d at 384-85, 387-88), but this Court declined a petition for writ of certiorari in the Seventh Circuit case cited for that proposition. *Mers v. Marriott Int'l Group Accidental Death & Dismemberment Plan*, 144 F.3d 1014 (7th Cir.), *cert. denied*, 525 U.S. 947 (1998).

unrealistic to expect that this Court or any other court could substitute a talismanic phrase for individualized consideration of each case. *See Doe v. Travelers Ins. Co.*, 167 F.3d 53, 57 (1st Cir. 1999) ("It seems to us that the requirement that Travelers' decision be 'reasonable' is the basic touchstone in a case of this kind and that fine gradations in phrasing are as likely to complicate as to refine the standard.").

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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